



STAFF REVIEW AND RECOMMENDATION

Variance Case #: V2013-26

Legistar #: 20130588

Board of Zoning Appeals Hearing: Monday, June 24, 2013 – 6:00 p.m.

Property Owner: Ruben Balcazar
1214 Aleamo Drive
Marietta, GA 30062

Applicant: Frederick V. Bauerlein
3939 Roswell Road, Suite 350
Marietta, GA 30062

Address: 1214 Aleamo Drive

Land Lot: 10950 District: 16 Parcel: 0230

Council Ward: 6 Existing Zoning: R-4 (Single Family Residential 4 units/acre)

Special Exception / Special Use / Variance(s) Requested:

1. Variance to allow a business vehicle to park in the front yard of a residentially zoned property. [§716.09 (I)]
2. Variance to allow an accessory structure in the front yard. [§708.04 (F.1)]
3. Variance to allow an accessory structure less than 10 feet from a property line. [§708.04 (F.1)]

Statement of Fact

As per section 720.03 of the Comprehensive Development Code of Marietta, the Board of Zoning Appeals may alter or modify the application of any such provision in the Development Code because of unnecessary hardship if doing so shall be in accordance with the general purpose and intent of these regulations, or amendments thereto, and only in the event the board determines that by such alteration or modification unnecessary hardship may be avoided and the public health, safety, morals and general welfare is properly secured and protected. In granting any variance the board of zoning appeals shall designate such conditions in connection therewith as will, in its opinion, secure substantially the objectives of these regulations and may designate conditions to be performed or met by the user or property owner, out of regard for the public health, safety, comfort, convenience, and general welfare of the community, including safeguards for, with respect to light, air, areas of occupancy, density of population and conformity to any master plan guiding the future development of the city. The development costs of the applicant as they pertain to the strict compliance with a regulation may not be the primary reason for granting a variance.

Criteria:

1. Exceptional or extraordinary circumstances or conditions *are/are not* applicable to the development of the site that do not apply generally to sites in the same zoning district.
2. Granting the application *is/is not* necessary for the preservation and enjoyment of a substantial property right of the applicant, and to prevent unreasonable property loss or unnecessary hardship.
3. Granting the application *will/will not* be detrimental or injurious to property or improvements in the vicinity of the development site, or to the public health, safety, or general welfare.

PICTURES



Metal awning at 1214 Aleamo Drive



Side Setback for awning

Recommended Action:

The applicant, Ruben Balcazar, is requesting variances for his home located at 1214 Aleamo Drive and zoned R-4 (Single Family Residential – 4 units/acre). All other surrounding properties are also zoned R-4 and contain single family residences. The variances that are being requested pertain to the parking of a business vehicle in the driveway under a new, metal canopy structure.

The applicant applied for and received a Type B Home Occupation for Ruben's Landscaping in 2009. Home occupations are occupational uses allowed in a person's residence, so long as these uses do not detract from the residential nature of the property. Type B Home Occupations are permitted primarily for home office uses with various restrictions, such as "*No more than one vehicle associated with the home occupation may be parked at the site*" and that the structure cannot be modified to specifically accommodate the home occupation.

Variance #1 – Work Vehicle in Front Yard

Section 716.09 further requires any business vehicle less than 8,000 pounds be parked in the side or the rear of the property. The driveway of Mr. Balcazar's residence is only located in the front yard; the orientation of his house and its proximity to the property line prevents a driveway from extending into the side or rear yard. As a result, Mr. Balcazar has a legitimate hardship as to where his work vehicle is placed. Since many of surrounding neighbors have provided written documentation of their support for his work vehicle being in the front yard, staff supports the approval of this variance.

Variances #2 & #3 - Awning

A metal awning structure has recently been placed in Mr. Balcazar's driveway without a permit. The Zoning Ordinance prohibits the placement of these structures in the front yard and within ten (10) feet of a property line; so these variances that would be necessary in order to allow the awning to remain as it is currently placed. Mr. Balcazar has not provided any reasoning as to why the awning was installed or why it is necessary. It should also be noted that the regulations pertaining to home occupations specifically prohibit exterior storage pertaining to home occupations [§712.04 (C)(3)] and that unenclosed carports may not be used to store "*any materials other than firewood or recyclable materials within a city approved container*" [§708.04 (G)(2)].

The Board of Zoning Appeals has heard similar requests; and most recently denied a variance for the placement of a metal awning structure in the side yard setback at 814 Delta Circle (V2013-19). An application for 53 Maple Avenue (V2013-02) was granted a variance to reduce the setback from 10' to 2.3' in order to construct a 2 car carport, which had been designed by an architect to match the house. However, in October 2007 an application for 1284 Banberry Drive (V2007-39) was denied a variance for a metal awning structure located 2' from the property line.

Because there are no other options available for the parking of his work vehicle, ***staff supports the approval of Variance #1***. However, because the property owner has not demonstrated a justifiable hardship for relief from the regulations for the placement of the metal awning because of the physical surroundings, shape, or topography of the property, ***staff recommends denial of Variances #2 and #3***.